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47-309-1DECLARATION OF 97A WESTERN AVENUE CONDOMINIUM

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THIS DECLARATION (the "Declaration") is executed as of the 13th day of January, 1994, by MARK S. KIERSTEAD, of Canaan, County of Somerset, State of Maine, and JOHN D. KOONS, of Sidney, County of Kennebec, State of Maine, (the "Declarant") pursuant to the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended (the "Act").

ARTICLE I

CREATION OF CONDOMINIUM; DEFINED TERMS

1.1. Declaration of Property. The Declarant, owners in fee simple of that certain lot or parcel of land (the "Land") in the City of Waterville, County of Kennebec, and State of Maine, more particularly described in Schedule "A" and of all buildings and improvements constructed on the Land and all easements, rights, privileges and appurtenances thereunto belonging (collectively, the "Property"), hereby submits the Property to the provisions of the Act and creates with respect to the Property a condominium as defined in Section 1601-103(7) of the Act (the "Condominium").

1.2. Defined Terms. As provided in Section 1601-103 of the Act, as the same may be amended from time to time, terms not otherwise defined herein, or in the plats, shall have the meanings specified in Section 1601-103 of the Act. "Condominium Instruments" shall mean this Declaration and all exhibits attached hereto or referred to herein, including the plats. "Common Area" shall have the same meaning as "Common Element."

ARTICLE II

IDENTIFICATION AND LOCATION OF CONDOMINIUM; ASSOCIATION

2.1. Name and Location of Condominium. The name of the Condominium is 97A WESTERN AVENUE CONDOMINIUM; its location is 97A Western Avenue, Waterville, Kennebec County, Maine 04901.

2.2. Name and Address of Association. The name of the Association is 97A WESTERN AVENUE CONDOMINIUM ASSOCIATION; its address is 97A Western Avenue, Waterville, Maine 04901.

2.3. Notice to Unit Owners. Notice of matters affecting the Condominium shall be given to Unit Owners by delivery in hand or by sending prepaid by United States mail to the mailing address of

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each Unit or to any other mailing address designated in writing by the Unit Owner.

**ARTICLE III
DESCRIPTION OF PROPERTY AND UNITS**

3.1. Description of the Property. A legally sufficient description of the Property included in the Condominium is set forth in Schedule A. The Property is shown on the condominium plats recorded on November 9, 1993 in the Kennebec County Registry of Deeds in File #E-93169, identified as follows: "Plan of 97A Western Avenue Condominium" dated September 30, 1993 by Thayer Engineering Company. ("Plats")

3.2. Location and Dimensions of Building. The boundaries, location and dimensions of the buildings, units and other improvements are depicted on the plats recorded in the Kennebec County Registry of Deeds, referred to in paragraph 3.1 and Schedule B.

3.3. Maximum Number of Units. The Declarant has created two (2) Units pursuant to this Declaration which are the maximum number of Units allowed. Declarant reserves no rights to create additional condominiums.

3.4. Units. Reference is made to Schedule C for the identifying number of each Unit created by this Declaration and to the plats for a description of each Unit created by this Declaration, including each Unit's identifying number, the locations and dimensions of the vertical boundaries and horizontal boundaries of each Unit, the Common Elements to which the Unit has direct access and any other information necessary to identify the Unit.

3.5. Allocated Interests. The Common Element Interest and Common Expense Liability allocated to each Unit are set forth in Schedule C.

3.6. Maintenance Responsibilities. Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary descriptions, the Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of Section 1603-107(a) of the Act, except as expressly set forth to the contrary in this Declaration.

**ARTICLE IV
COMMON ELEMENTS, LIMITED COMMON ELEMENTS
AND APPLICABLE PROVISIONS**

4.1. Common Elements. The Common Elements are shown on the plats referred to in paragraph 3.1 above.

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4.2. Allocation of Limited Common Elements. Limited Common Elements consist of those portions of the Common Elements allocated for the exclusive use of one of the Units. The location and dimension of all Limited Common Elements, except for the portions of the Property described as Limited Common Elements pursuant to Section 1602-102(2) and (4) of the Act, and the identification of the Unit to which the Limited Common Elements are hereby allocated are described in the plats.

4.3. Common Elements to Remain Undivided. The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the Common Element Interest, whether or not expressly referred to in the instrument effecting such transfer. The Common Elements shall remain undivided and no action for partition or division of any part thereof shall be permitted, unless otherwise provided by law and permitted by this Declaration.

4.4. Use of Common Elements. Except as their use may otherwise be limited by this Declaration or the By-Laws or otherwise by the Executive Board pursuant to its powers, each Unit Owner, tenant and occupant of a Unit, and the invitees and guests of such Unit Owner, tenant and occupant, may use the Common Elements in common with the other Unit Owner and tenants or occupants of the other Unit, and their invitees and guests, in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Unit Owner, upon the following terms:

4.4.1. Parking of motor vehicles by Unit Owners, tenants, guests, visitors, and invitees shall be only in the Common Elements designated as spaces for parking. No unattended vehicle shall at any time be left in such a manner as to impede the passage of traffic or to impair access to parking areas. The Executive Board shall designate the number of parking spaces allowed in the Common Element. The Board shall assign or reassign parking spaces to a Unit Owner as the need arises.

4.4.2. No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Executive Board.

4.4.3. Parking areas and Common Elements shall at all times be kept free of unreasonable accumulations of debris or rubbish of any kind. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Executive Board, or its designee, as appropriate.

ARTICLE V
EASEMENTS

5.1. Utilities, Pipes and Conduits. Each Unit Owner shall have an easement to use, maintain and service all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements serving his Unit and located in the other Unit. Each Unit shall be subject to an easement in favor of the other Unit Owner to use, maintain and service the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Unit and located in such Unit. Unit 2 shall have an easement to access the basement of Unit 1 as depicted on the Plan as "Easement of Unit 2" and Unit 1 shall have access to the basement of Unit 2 through the bulkhead depicted on said Plan to install, maintain and service such Common Elements.

5.3. Condominium Association and Executive Board Access. The Association and its Executive Board, officers, agents and employees, and the managing agent and every other person authorized by the Executive Board shall have the irrevocable right and easement to have access to each Unit as provided in Section 1603-107(a) of the Act as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Elements and Limited Common Elements therein or accessible therefrom or the making of any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit or Units, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Unit Owner is present at the time. The Association and its Executive Board shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Elements for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

ARTICLE VI
ASSESSMENTS FOR COMMON EXPENSES

6.1. Common Expenses. Each Unit Owner shall pay to the Association, or its authorized representative, his proportionate share of the expenses of maintenance, repair, replacement, administration and operation of the Common Elements, including insurance and any other expenses approved by the Executive Board, and of keeping the Common Elements in good repair in good maintenance and repair, as well as a reserve for major maintenance or replacement. Such proportionate share shall be as set forth in Exhibit C attached hereto except that Common Expenses which, in the judgment of the Executive Board of the Association, benefit only

one of the Units may be assessed exclusively against the benefitted Unit. Payment thereof shall be in such amount and at such times as may be determined by the Executive Board. In the event of the failure of a Unit Owner to pay such proportionate share when due, the amount hereof shall constitute a lien on the interest of such Unit Owner, as provided by the Condominium Act.

ARTICLE VII
MAINTENANCE OF PROPERTY

7.1. Maintenance of Limited Common Elements. The maintenance, repair and replacement of Limited Common Elements shall be the responsibility of and at the expense of the Unit Owner of the Unit to which the Limited Common Element is allocated.

7.2. Maintenance of Common Elements. The Association shall be responsible for the maintenance, repair and replacement (unless, in the opinion of the Executive Board, such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements whether located inside or outside of the Units, and all other property owned or leased by the Association, the cost of which shall be charged to the Owners as a Common Expense. The maintenance, repair and replacement of Common Elements located within a unit, or for which the Unit Owner is otherwise responsible, to the extent required for the functioning of or for connecting utilities to the Property and Units shall be furnished by the Association as part of the Common Expenses.

7.3. Maintenance of Unit. Each Unit Owner shall keep and maintain his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or nonstructural, ordinary or extraordinary, and shall do all work which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to the other Unit or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owner. Each Unit Owner shall promptly report to the Executive Board or the managing agent any defect or need for repairs for which the Association is responsible.

7.4. Liability of Owner. Each Unit Owner shall be liable, and the Association shall have a lien against his Unit for, the expense of maintenance, repair or replacement of any damage to the Common Elements including Limited Common Elements such as windows or of another Unit caused by such Unit Owner's act, neglect or carelessness, or by such Unit Owner's guests, employee, agents, or lessees, which the Association shall have the right to cure, correct, maintain, repair or replace. Such liability shall include

any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation against such Unit Owner.

**ARTICLE VIII
ASSOCIATION OF UNIT OWNERS**

8.1. The Association. Powers. The Association is a nonprofit and nonstock corporation organized under Title 13-B of the Maine Revised Statutes of 1964, as amended, and is the governing body for all the Unit Owners with respect to the administration, maintenance, repair, replacement, cleaning, sanitation, management and operation of the Common Elements, and the making of any additions or improvements thereto as provided in this Declaration and in the By-Laws, but nothing herein contained shall be construed so as to preclude the Association from delegating any of these duties to a manager or agent or to any other person subject to the authority of the Association. The membership of the Association at all times shall consist exclusively of all Unit Owners, or, following any termination of the Condominium as provided in Section 1602-118 of the Act, of all former Unit Owners entitled to distributions of proceeds under said Section 1602-118, or their heirs, successors or assigns but shall not include persons having an interest in a Unit solely as security for an obligation. Each Unit Owner shall automatically become and be a member of the Association as long as he continues as a Unit Owner and upon the termination of the interest of the Unit Owner in the Condominium his membership and any interest in the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Unit Owner or Owners succeeding him in interest. The Association shall have all the powers granted pursuant to Section 1603-102 of the Act including the powers to assign its right to future income.

8.2. Executive Board Powers. Except as otherwise provided in Section 1603-103(b) of the Act, the Executive Board may act on behalf of the Association, shall have all of the powers necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Act or this Declaration or the By-Laws required to be exercised and done by the Association. The affairs of the Association shall be governed by an Executive Board composed of two (2) persons who must be Unit Owners.

8.3. Powers and Duties of the Board. The Board for the benefit of all the Owners shall acquire, and shall pay for out of the maintenance fund hereinafter provided for, the following:

- (a) **Services.** Waste removal, snow removal, water, sewage and other necessary utility service for the Common Elements.

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- (b) **Property Insurance.** A policy or policies of insurance insuring the Common Elements, Limited Common Elements and the Units against loss or damage by the perils of fires, lightning and those contained in the extended coverage, vandalism and malicious mischief endorsements for the full insurable replacement value of the Common Elements, Limited Common Elements and the Units written in the name of, and the proceeds thereof shall be payable to, the Members of the Board, as trustees for each of the Owners in the percentages established in Exhibit "C." Said policy or policies shall provide for separate protection for each Unit and its attached, built-in or installed fixtures and equipment to the full insurable replacement value thereof, and a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any. Prior to obtaining any such policy or policies of insurance or any renewal thereof, the Board shall obtain appraisals from a qualified appraiser for the purpose of determining the full replacement value of the Common Elements, Limited Common Elements and the Units for the amount of insurance to be effected pursuant hereto. The cost of any and all such appraisals shall be Common Expenses.
- (c) **Liability Insurance.** Comprehensive public liability and property damage insurance in such limits as the Board shall deem desirable insuring the members of the Board, the managing agent, if any, their agents and employees and the Owners including Cameo from any liability in connection with the Common Elements or the streets and sidewalks adjoining the Property. Such insurance coverage shall also cover cross liability claims of one insured against another.
- (d) **Parking.** The Board shall have the authority to enter into a lease for additional parking and shall pay any rents, costs and fees associated with such lease.

8.4. **Votes in Association.** One Vote in the Association is allocated to each Unit. In case of a dispute, the Executive Board shall submit the matter to a neutral arbitrator whose decision shall be conclusive and binding upon the Unit Owners.

8.5. **Compliance with By-Laws.** Each Unit Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth or incorporated by reference in this particular Declaration or in the deed to his Unit. Failure to so comply shall be grounds for an action to recover damages or for injunctive relief or both maintainable by the Manager or Board of Directors on behalf of the Association or in a proper case by an aggrieved Unit Owner all at the expense of the violator. No Unit

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Owner shall do any work which may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, rights, appurtenances or other hereditament consisting of Common Elements, without the unanimous consent of all the Executive Board.

**ARTICLE IX
RESTRICTIONS ON USE, OCCUPANCY AND ALIENATION OF UNITS**

9.1. Use and Occupancy Restrictions on Units. Each Unit shall be occupied and used subject to the following restrictions:

9.1.1. Each Unit is intended to serve as a self-contained professional office building. No Unit shall be used for residential use unless approved in writing by the Executive Board.

9.1.2. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the Common Elements.

9.1.3. No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of any other Unit or the Common Elements.

9.1.4. No Unit Owner or occupant shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Unit or the Common Elements by the Owner or occupant of any other Unit, or which creates or results in a hazard or nuisance on the Property.

9.1.5. Due to the limitation of available parking space, no Unit Owner shall increase the number of persons employed by him or using the Unit for professional purposes without prior written consent from the Executive Board.

9.1.6. Unit Owners shall comply with any municipal use or zoning ordinances, and all regulations or variances thereto, applicable to the Property.

9.2. Lease of Unit. Unit Owners may rent their respective Units. The Executive Board may prescribe by resolution a form of

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lease or specific provisions to be included in any lease of a Unit, and thereafter no Unit Owner shall execute a lease of his own Unit not in compliance with such resolution.

ARTICLE X
MORTGAGES OF UNITS; RIGHTS OF MORTGAGEES

10.1. Right to Mortgage. Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with the Allocated Interests appurtenant to such Unit as provided in the Condominium Act. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Common Elements or any part thereof except his own Unit and his own respective Allocated Interests appurtenant to his Unit.

ARTICLE XI
COVENANTS RUNNING

11.1. Covenants. The provisions of this Declaration and the By-Laws and the rights and obligations established hereby shall be deemed to be covenants, running with the land, so long as the property remains subject to the provisions of the Condominium Act and shall inure to the benefit of and be binding upon each and all of the Unit Owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording of or by the acceptance of a deed conveying a Unit or any interest therein, the grantee, his heirs, successors or assigns shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Condominium Act, this Declaration, and the By-Laws. Acceptance of such deed shall also constitute waiver of minor discrepancies in the plats.

IN WITNESS WHEREOF, Mark S. Kierstead and John D. Koons as
Declarants have caused this Declaration to be executed as of the
date and year first above written.

Aurice A. Poirier
Witness

Mark S. Kierstead
MARK S. KIERSTEAD

Alayne B. Feltner
Witness

John D. Koons
JOHN D. KOONS

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STATE OF MAINE
KENNEBEC, ss.

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January 13th, 1994

Then personally appeared before me the above-named Mark S. Kierstead and John D. Koons and acknowledged the foregoing instrument to be their free act and deed.

Tara J. Cushing
Notary Public
Attorney-at-Law

TARA J. CUSHING
NOTARY PUBLIC
RECEIVED JAN 14 1994

(Print Name)

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SCHEDULE "A"

PROPERTY DESCRIPTION

97A WESTERN AVENUE CONDOMINIUM

A certain lot or parcel of land, with the improvements thereon, situated on the northeasterly side of Western Avenue, so-called, and on the northwesterly side of Taylor Terrace, so-called, in the City of Waterville, Kennebec County, State of Maine, and being bounded and described as follows:

Beginning at a 3/4-inch iron rod set capped "Thayer" at the intersection of the northeasterly right-of-way line of said Western Avenue with the northwesterly right-of-way line of said Taylor Terrace, all as shown on a plan entitled "Plan of Standard Boundary Survey, 97A Western Avenue Condominium, Western Avenue & Taylor Terrace, Waterville, Maine," dated April 12, 1993, by Thayer Engineering Company, Farmingdale, Maine, recorded in the Kennebec County Registry of Deeds in File #E-93169;

Thence N 51° 38' 11" W along the northeasterly right-of-way line of said Western Avenue a distance of 62.50 feet to a 1/2-inch iron pipe found and the southerly corner of land now or formerly of one Jennie Joseph and Albert G. Joseph, reference deed recorded in Kennebec County Registry of Deeds in Book 1793, Page 315;

Thence N 38° 21' 49" E along the southeasterly line of land of said Joseph a distance of 160.00 feet to a 3/4-inch iron rod set capped "Thayer" and the southwesterly line of land now or formerly of one Victor J. Vigue and Monica B. Vigue, reference deed recorded in said Registry of Deeds in Book 1470, Page 202;

Thence S 51° 38' 11" E along the southwesterly line of land of said Vigue a distance of 62.50 feet to a 3/4-inch iron rod set capped "Thayer" and the northwesterly right-of-way line of said Taylor Terrace;

Thence S 38° 21' 49" W along the northwesterly right-of-way line of said Taylor Terrace a distance of 160.00 feet to the point of beginning, containing 10,000 square feet, more or less.

Bearings are based upon a 1993 magnetic north observation.

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SCHEDULE "B"

97A WESTERN AVENUE CONDOMINIUM DECLARATION

This schedule consists of the Condominium Plats prepared by Thayer Engineering Company entitled "97A Western Avenue Condominium" and recorded in the Kennebec County Registry of Deeds, Plan File #E-93169.

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SCHEDULE "C"

97A WESTERN AVENUE CONDOMINIUM DECLARATION

<u>Unit Identifying Number</u>	<u>Common Element Interest Common Expense Liability</u>	<u>Votes</u>
1	50%	1
2	50%	1
	<hr/> 100%	<hr/> 2

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ATTEST: *Lorne Paul Morris*
REGISTER OF DEEDS

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